IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3769 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR BANARASIDAS & 1 - Petitioner(s)

Versus

SHIVIBEN WD/O.MANGHAJI LALLUJI & 1 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1,
MR. DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the

Gujarat Revenue Tribunal dated 22.12.89 passed in Revision Application No.TEN.B.A.204/87 in dismissing the same and confirming the order passed by the Dy. Collector (Land Reforms), Ahmedabad dated 31.1.87 passed under Section 84(C) of the Bombay Tenancy Act.

2. The dispute is with regard to the land bearing Survey No. 754/8 admeasuring 16-Gunthas situated at village Makarba which was purchased by the petitioner by registered sale-deed dated 5.2.82. The Mamlatdar & ALT initiated the proceedings under Section 84(C) of the Bombay Tenancy Act and the petitioners were required to show cause as to why the sale in favour of the petitioners should not be declared invalid. The said show-cause notice was issued on the ground that the petitioners were not agriculturists within 8 kms. and the said land is fragmented land and chould not be purchased by the petitioners. Thereafter, the Mamlatdar & ALT by its order dated 5.8.85 dropped the proceedings under Section 84(C) of the Act by holding that the transaction is between two agriculturists. The Dy. Collector (Land Reforms), Ahmedabad taken the aforesaid order passed by the Mamlatdar & ALT dated 5.8.85 under suo-motu revision and issued notice on 9.10.86 and in

the said notice it was also alleged that there was breach of the provisions of the Bombay Prevention of Fragmentation Act. The Dy. Collector (Land Reforms), Ahmedabad by its judgment and order dated 31.1.87 allowed the said Revision Application and quashed and set aside order passed by the Mamlatdar & ALT dated 5.8.85 and remanded the matter to Mamlatdar & ALT for deciding the same afresh and also to consider whether the sale in favour of the petitioner is in breach of the provisions of the Bombay Prevention of Fragmentation Act or not. Being aggrieved and dissatisfied with the judgment and order passed by the Dy. Collector (Land Reforms), Ahmedabad dated 31.1.87, the petitioners preferred Revision Application No. TEN.B.A.204/87 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its judgment and order dated 22.12.89 dismissed the said Revision Application confirming the order passed by the Dy. Collector (Land Reforms), Ahmedabad dated 31.1.87. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 22.12.87 passed in Revision Application No.TEN.B.A.204/87, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3.Shri J.M.Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that when the powers are exercised by the Dy. Collector (Land Reforms), Ahmedabad under Section 76(A) of the Bombay Tenancy Act, the same were required to be exercised within a reasonable period, more particularly, within one year and in the present case, the powers are exercised after a period of one year and therefore, the same is not permissible and therefore, the Dy. Collector (Land Reforms), Ahmedabad was not justified in remanding the matter to the Mamlatdar & ALT. It is also further submitted that so far as the objection with regard to the fact that the petitioners were not agriculturists within 8 kms. is concerned, in view of the amendment of Section 2 of the Bombay Tenancy Act, the same is not required to be considered at this stage now and therefore, there is no purpose in remanding the matter to the Mamlatdar & ALT and hence, it is requested to allow the present Special Civil Application.

4.Per contra, Shri Dipen Desai, learned AGP has submitted that the Revision Application before the Gujarat

Revenue Tribunal was against the order of remand passed by the Dy. Collector (Land Reforms), Ahmedabad and though in view of the amendment in Section 2 of the Bombay Tenancy Act, there is no requirement of agriculturists within 8 kms. still the question, is required to be considered, with regard to the breach of the provisions of the Bombay Prevention of Fragmentation Act, as prima-facie, it appears to be a fragment land and therefore, when the Dy. Collector (Land Reforms), Ahmedabad has directed the Mamlatdar to consider the case with regard to breach of provisions of the Bombay Prevention of Fragmentation Act, there is no illegality committed by the Dy. Collector (Land Reforms), Ahmedabad and the petitioners will be given ample opportunity to put forward their case and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocate appearing on behalf of the parties.

6. So far as the contention on behalf of the petitioners that the powers are exercised by the Dy. Collector (Land Reforms), Ahmedabad after a period of one year

and/or unreasonable period is concerned, it is required to be noted that the Mamlatdar & ALT passed an order dropping the proceedings under Section 84(C) of the Bombay Tenancy Act by its order dated 5.8.85 and the notice came to be issued by the Dy. Collector dated 9.10.86 and therefore, in the facts and circumstances of the case, it cannot be said that the same was after unreasonable period. Even otherwise, the Dy. Collector (Land Reforms), Ahmedabad passed an order remanding the matter to the Mamlatdar & ALT and the same was challenged before the Gujarat Revenue Tribunal. Normally, the order of remand are not required to be interfered with as ample opportunity will be given to the parties to put forward their case. In the present facts and circumstances of the case, the Dy. Collector (Land Reforms), Ahmedabad has not committed any illegality in remanding the matter to the Mamlatdar & ALT to consider the aspect whether transfer in favour of the petitioner was in breach of the provisions of the Bombay Prevention of Fragmentation Act, which is not required to be interfered with by this Court, in this petition under Article 227 of the Constitution of India and as such there is no jurisdictional error, much less an error of law committed by any of the

authorities below.

7. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

8. Rule is discharged. Ad-interim relief granted earlier stands vacated. However, there will be no order as to costs.

(M.R.SHAH, J.)

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